

KLEINE PC

BENJAMIN H. KLEINE (257225)
95 Third Street, 2nd Floor, #9048
San Francisco, CA 94103
Telephone: 415-465-5655
ben@kleinepc.com

COOLEY LLP

ALEXANDER J. KASNER (310637)
(akasner@cooley.com)
1299 Pennsylvania Avenue NW
Suite 700
Washington, District of Columbia 20004-2400
Telephone: +1 202 842 7800
Facsimile: +1 202 842 7899

RONAN A. NELSON (346553)
(rnelson@cooley.com)
10265 Science Center Drive
San Diego, CA 92121-1117
Telephone: +1 858 550 6000
Facsimile: +1 858 550 6420

Attorneys for Third-Party
WIKIMEDIA FOUNDATION, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

J.A. CASTRO,

Plaintiff,

-v-

JOHN DOE 1 a/k/a CHETSFORD,

Defendant.

Case No. 23-mc-80198-YGR

**WIKIMEDIA FOUNDATION, INC.'S
RESPONSE TO J.A. CASTRO'S
REPLY TO ORDER TO SHOW
CAUSE WHY THE COURT SHOULD
GRANT THE MOTION TO COMPEL**

1 Third-party Wikimedia Foundation, Inc. (“Wikimedia”) respectfully responds to J.A.
 2 Castro’s Reply, ECF 38 (the “Reply”), to the Order to Show Cause Why the Court Should Grant
 3 the Motion to Compel, ECF 37 (the “Order to Show Cause”) as follows:

4 The Court should deny the motion to compel for numerous independent reasons. First, as
 5 the Court rightfully notes, the Third Amended Verified Complaint in the Northern District of Texas
 6 action, ECF 36 in No. 23-cv-00613 (N.D. Tex.) (the “TAC”), explicitly states that “no relief is
 7 sought against Defendant John Doe 1”—also referred to by the Wikipedia handle, “Chetsford,”
 8 TAC ¶ 11; *see also id.*, Prayer for Relief ¶ C (“No relief is or will be sought against Defendant John
 9 Doe 1.”). As such, it would appear that the TAC fails to meet the pleading requirements of Rule 8
 10 as to John Doe 1, which requires “a demand for the relief sought” and “a short and plain statement
 11 of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(3) and (a)(2).

12 Second, if the Court were to reach the balancing stage under the *Highfields* test, the fact that
 13 Castro seeks no relief against Chetsford substantially tips the balance of interests further in
 14 Chetsford’s and Wikimedia’s favor. While Castro argues that discovery from Chetsford should
 15 still be available to support his claims against the other defendants in the Northern District of Texas
 16 action, his argument is not persuasive. To the contrary, the rationale for de-anonymizing
 17 Chetsford—i.e., a finding that Castro’s need for discovery outweighs Chetsford’s, Wikimedia’s,
 18 and Wikimedia’s users’ First Amendment interests—are far weaker in the context of discovery to
 19 support claims *against other defendants* than, as originally briefed by the Parties, Castro were
 20 seeking discovery to pursue claims *against Chetsford*.

21 None of Castro’s justifications for why he needs this discovery hold water. *First*, while he
 22 argues that discovery is needed to learn “whether Defendant Chetsford has engaged in other such
 23 paid malicious attacks on the character and reputation of others to evidence a pattern of habitual
 24 conduct” Reply at 2, that evidence—even if it were otherwise admissible—is irrelevant if no claim
 25 for relief is sought against Chetsford. It certainly does not justify overriding the First Amendment
 26 rights of Chetsford, Wikimedia, and Wikimedia’s users. *Second*, Castro argues that he needs
 27 discovery from Chetsford “to learn more about the manner by which the Trump Defendants secured
 28 his services, the amount Defendant Chetsford was paid to maliciously defame Plaintiff, . . . whether

1 there were other parties involved who may be civilly liable as well, and to develop the evidentiary
 2 record for trial.” (Reply at 2). But there is no reason that this discovery could not be had from the
 3 Trump Defendants without trampling on the First Amendment rights of Chetsford, Wikimedia and
 4 Wikimedia’s users.¹

5 For these reasons, the TAC in the Northern District of Texas action only tips the balance of
 6 interests even more strongly in Wikimedia’s and Chetsford’s favor. *See* ECF No. 33 at 7 and ECF
 7 No. 7 at 14 (articulating how the balance of interests already tipped in Wikimedia’s and Chetsford’s
 8 favor).

9 Third, the new admission that Castro does not and will not seek relief against Chetsford also
 10 raises a separate reason the Court should deny the motion to compel: Castro has not demonstrated
 11 that he has sought to obtain the discovery he seeks from the Parties to the litigation before seeking
 12 to burden Wikimedia (and Chetsford) with discovery. For this reason alone—i.e., without even
 13 needing to engage with the *Highfields* test—the Court should deny the motion to compel. *See*
 14 *Genus Lifesciences v. Lannett Co.*, 2019 WL 7313047, at *4 (N.D. Cal. Dec. 30, 2019) (when
 15 requesting party has not shown it attempted to obtain discovery from opposing party before seeking
 16 the documents from a non-party, a subpoena places an undue burden on the non-party).²

17 Finally, Wikimedia reiterates its argument that the Court need not even engage in the
 18 balancing test under *Highfields* since Chetsford has not come forward with admissible evidence to
 19 support his claims. *See* ECF No. 33 and ECF No. 7. Notably, even after being given multiple
 20

21 ¹ Of course, it is also important not to lose sight of the fact that Castro’s underlying theory is incorrect
 22 and without credible basis: long before Castro filed the motion to compel, Wikimedia offered to
 23 provide Castro with an affidavit from Chetsford (which would be pseudonymized to protect his
 identity) attesting that Chetsford was not paid to edit Castro’s Wikipedia page and did not
 coordinate with the Trump campaign. ECF No. 8 ¶ 7. In other words, the entire litigation,
 including the Texas action and this action, are founded on incorrect and unsupported speculation.

24 ² While Wikimedia has not previously argued burden, the previous briefing on the motion to compel
 25 was made under Castro’s original N.D. Tex. Complaint, in which Chetsford was the primary
 26 defendant of the alleged defamation claim and where Wikimedia was the only party or non-party
 27 that held the IP address information sought. With Castro’s admission that he only seeks discovery
 28 of Chetsford’s IP address(es) to support claims against defendants other than Chetsford, his
 arguments for why the discovery is needed must be examined, which—as discussed herein—
 reveals that all of the legitimate uses would be duplicative of discovery Castro could take of the
 other defendants. As a result, the Subpoena would place undue burden on third-party Wikimedia.
Genus Lifesciences, 2019 WL 7313047 at *4.

1 chances to put this evidence before the Court, Chetsford has failed to provide any evidence, let
2 alone specific allegations, to support his claims.

3 For each of these reasons, the Court should deny the motion to compel.

4 Respectfully submitted,

5
6 Date: December 21, 2023

KLEINE PC
95 Third Street, 2nd Floor, #9048
San Francisco, CA 94103
Telephone: 415-465-5655
ben@kleinepc.com

7
8
9 By: /s/ Benjamin H. Kleine
Benjamin H. Kleine (SBN 257225)

10 **COOLEY LLP**
ALEXANDER J. KASNER (310637)
(akasner@cooley.com)
1299 Pennsylvania Avenue NW, Suite 700
Washington, District of Columbia 20004-2400
Telephone: +1 202 842 7800
Facsimile: +1 202 842 7899

14 **RONAN A. NELSON (346553)**
(rnelson@cooley.com)
10265 Science Center Drive
San Diego, CA 92121-1117
Telephone: +1 858 550 6000
Facsimile: +1 858 550 6420

18 Attorneys for Third-Party
WIKIMEDIA FOUNDATION, INC.